

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

PATCH OF LAND LENDING, LLC, a
Delaware limited liability company

Plaintiff

vs.

MAYFAIR REAL ESTATE, LLC, an Ohio
limited liability company; A. DAVID
WIGGINS, *aka* ALBERT DAVID WIGGINS,
aka ALBERT M. WIGGINS, *aka* ADAVID D.
WIGGINS, *aka* ASH WIGGINS, *aka* DAVID
ALBERT WIGGINS; JON PETERSON, in his
official capacity as TREASURER OF
DELAWARE COUNTY, OHIO; OMEGA
FEDERAL CREDIT UNION; and EMILY C.
WIGGINS

Defendants

CIVIL CASE NO.:
2:17-CV-00483-EAS-KAJ

THE HONORABLE
CHIEF UNITED STATES DISTRICT JUDGE
EDMUND A. SARGUS, JR.

THE HONORABLE
UNITED STATES MAGISTRATE JUDGE
KIMBERLY A. JOLSON

**ORDER (a) CONFIRMING THE SPECIAL MASTER'S SALE OF THE PROPERTY, (b)
AUTHORIZING THE SPECIAL MASTER TO EXECUTE A DEED, (c) AWARDING A
WRIT OF POSSESSION, (d) ENTERING A DEFICIENCY JUDGMENT, AND (e)
GRANTING OTHER RELIEF**

458 West Orange Road, Delaware, Ohio 43015
(Parcel #318-233-03-014-001)

This cause came to be heard on the Amended Motion of the Plaintiff, Patch of Land Lending, LLC, a Delaware limited liability company ("POL Lending"), to (a) confirm the judicial sale of the hereinafter-described Property, (b) authorize the Special Master to execute a deed, (c) award a Writ of Possession, (d) enter a deficiency judgment, and (e) grant other relief.

The Amended Motion was filed on January 9, 2019.

Having thoroughly reviewed the Amended Motion and the record, this Court FINDS as follows:

1. Proper notice of the Amended Motion has been given to all interested parties and claimants in accordance with this Court's motion practice and notice requirement.
2. Defendant, Mayfair Real Estate, LLC, an Ohio limited liability company ("Mayfair Real Estate"), is the legal owner of the real estate more commonly known as the real property more commonly known as 458 West Orange Road, Delaware, Ohio 43015 (Parcel #318-233-03-014-001) (the "Property"). (ECF Doc. 68 at 3.)
3. The Property is more specifically described as follows:

Situated in the Twp. of Orange, County of Delaware, State of Ohio:

Located in Farm Lot 1, Section 2, Twp. 3 N., Range 18 W., U.S. M.L., being 1.998 acres out of a 5.523 acre tract conveyed to Ronald D. Hopper in Deed Book 472, Page 750 and being more particularly described as:

Beginning, at a Mag Nail set in the centerline of W. Orange Rd. (Twp. Rd. 114), the same being the Southwesterly corner of N. Orange, Section 3, Phase I, a subdivision of record in Plat Cabinet 2, Slides 754, being the Southwesterly corner of said subdivision and being the Southeasterly corner of said 5.523 acres:

Thence, N. 84° 40' 00" W., along the centerline of said road and with the Southerly line of said 5.523 acre tract a distance of 173.51' to a Mag Nail set; thence, N. 04° 51' 31" E., crossing a portion of said 5.523 acres, a distance of 501.44' to an iron pin set; thence, S. 84° 49' 09" E., crossing a portion of said 5.523 acres a distance of 173.50' to an iron pin set in the Westerly line of said Reserve "A", the same being the Easterly line of said 5.523 acres; thence, S. 04° 51' 31" W., with the Westerly line of said Reserve "A" and with the Easterly line of said 5.523 acres, passing found at a distance of 476.73' to total distance of 501.90' to TRUE PLACE OF BEGINNING.

Containing 1.998 acres of land, more or less.

Address: 458 West Orange Road, Delaware, Ohio 43015
Parcel: 318-233-03-014-001

(ECF Doc. 68 at 3-4.)

4. According to the Judgment Entry and Decree of Mortgage Foreclosure and Sale, the following amounts were adjudged due and owing:

- a. Upon Counts I and II of the Complaint, Judgment in favor of the Plaintiff, POL Lending, and against Defendants, Mayfair Real Estate and Albert David Wiggins, *aka* A. David Wiggins ("David Wiggins"), jointly and severally, in the total sum of \$1,179,993.33, plus interest in the per diem amount of \$666.67 from November 17, 2017 and thereafter and all other amounts recoverable under the Note and the Guaranty.
- b. Upon the Cross-Claim of Defendant/Cross-Claimant, Jon Peterson, in his official capacity as Treasurer of Delaware County, Ohio (the "Treasurer"), Judgment in tax foreclosure in favor of the Treasurer and against Mayfair Real Estate in the amount of all current, delinquent, past due and owing real estate taxes, assessments, charges, interest, penalties, fees and court costs permitted under Revised Code § 5721.10 and other applicable law.
- c. Upon the Cross-Claim of Defendant/Cross-Claimant, Omega Federal Credit Union ("Omega"), Judgment in favor of Omega and against Defendants, David Wiggins and Emily C. Wiggins ("Emily Wiggins"), jointly and severally, in the total sum of \$234,601.74, plus interest in the per diem amount of \$26.95 from January 20, 2018 and thereafter and all other amounts recoverable under Omega's First Note and Omega's First Mortgage.
- d. Upon the Cross-Claim of Defendant/Cross-Claimant, Omega, Judgment in favor of Omega and against Defendants, David Wiggins and Emily Wiggins, jointly and severally, in the total sum of \$786,525.81, plus interest in the per diem amount of \$95.37 from January 20, 2018 and thereafter and all other amounts recoverable under Omega's Second Note and Omega's Second Mortgage.

(ECF Doc. 68 at 6-7.)

5. According to the Judgment Entry and Decree of Mortgage Foreclosure of

Sale, the Property was ordered to be sold with the proceeds applied against the indebtedness of Defendants, Mayfair Real Estate, David Wiggins, and Emily Wiggins, as stated more fully in Paragraph 4(a), 4(b), 4(c), and 4(d) above until fully repaid. (ECF Doc. 68 at 7.)

6. J. Bradford Linville of Sikora Law, LLC (the "Special Master") was appointed as Special Master and authorized to sell the Property by public auction pursuant to law and Order(s) of this Court. (ECF Doc. 70.)
7. Notice of the judicial sale was given to the Property owner, Mayfair Real Estate, and to all parties in interest and claimants as required by law and Order(s) of this Court. (ECF Docs. 76, 77 and 78.)
8. Notice of the judicial sale was published in a newspaper regularly issued and of general circulation in Delaware County, Ohio where the Property is situated for four consecutive weeks commencing on October 29, 2018 and ending on November 19, 2018 with respect to *The Delaware Gazette*, and commencing on October 31, 2018 and ending on November 21, 2018 with respect to *The Daily Reporter*. (ECF Docs. 79 and 80.)
9. The Special Master conducted the judicial sale of the Property on November 30, 2018 at which time the Property was sold to 221B Baker Street, LLC, an Ohio limited liability company, as the highest bidder for the sum of \$1,067,492.00. The terms of the judicial sale were fair and reasonable.
10. The judicial sale was conducted fairly and without fraud and pursuant to Ohio law and Order(s) of this Court. Justice was done in all respects.

Therefore, it is hereby ORDERED, ADJUDGED and DECREED as follow:

- A. Plaintiff's Amended Motion to (a) confirm the judicial sale of the Property, (b) authorize the Special Master to execute a deed, (c) award a Writ of Possession, (d) enter a deficiency judgment, and (e) grant other relief is APPROVED and GRANTED.
- B. The Special Master's judicial sale of the Property on November 30, 2018 is approved, ratified and confirmed.
- C. Decretal Paragraph H(11) of the Judgment Entry and Decree of Mortgage Foreclosure and Sale entered on July 18, 2018 shall be amended to provide for 221B Baker Street, LLC, an Ohio limited liability company, to remit the remaining balance of the sale proceeds to the Special Master on or before January 18, 2019. The remaining provisions of said Paragraph shall remain in full force and effect.
- D. The Special Master is authorized to execute a deed in favor of 221B Baker Street, LLC, an Ohio limited liability company, to transfer and convey the Property. The

Recorder of Delaware County, Ohio shall be permitted to immediately record the deed without affixing any transfer stamps.

- E. 221B Baker Street, LLC, an Ohio limited liability company, is subrogated to all rights of the original mortgagees, Omega Federal Credit Union and Patch of Land Lending, LLC, in the Property to the extent necessary for the protection of 221B Baker Street, LLC's title.
- F. 221B Baker Street, LLC, an Ohio limited liability company, shall be awarded a Writ of Possession to place it in immediate possession of the Property.
- G. Out of the deposit in the amount of \$1,200.00 in the Registry Fund of the Court, the Clerk of Court shall pay the following claims in order of their stated priority:
 - 1. to Earl Welsh, for appraisal services, the sum of \$150.00; and
 - 2. to Donna Reed, for appraisal services, the sum of \$150.00; and
 - 3. to Ed Robson, for appraisal services, the sum of \$150.00; and
 - 4. to the Special Master, J. Bradford Linville of Sikora Law, LLC, for compensatory services in conducting the foreclosure sale, the sum of \$750.00.
- H. Out of the foreclosure sale proceeds in the amount of \$1,067,492.00, the Special Master shall pay the following claims in order of their stated priority:
 - 1. to the Special Master, J. Bradford Linville of Sikora Law, LLC, for compensatory services in conducting the foreclosure sale, the sum of \$522.00; and
 - 2. to the Treasurer of Delaware County, Ohio, for delinquent real estate taxes, interest, and penalties, and for current real estate taxes and assessments levied against the Property up to and including November 30, 2018, the sum of \$66,497.75; and
 - 3. to Omega Federal Credit Union, for unpaid principal, accrued and unpaid interest, late charges, and all other amounts recoverable under Omega's First Note and Omega's First Mortgage (as those terms are defined under ECF Doc. 68) up to and including November 30, 2018, the sum of \$244,538.58; and
 - 4. to Omega Federal Credit Union, for unpaid principal, accrued and unpaid interest, late charges, and all other amounts recoverable under Omega's Second Note and Omega's Second Mortgage (as those terms are defined under ECF Doc. 68) up to and including

November 30, 2018, the sum of \$755,933.67; and

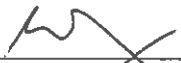
5. to Patch of Land Lending, LLC, for unpaid principal, accrued and unpaid interest, late charges, and all other amounts recoverable under the Note, the Guaranty, and the Mortgage (as those terms are defined under ECF Doc. 68), the sum of \$0.00.
- I. A deficiency judgment shall be entered in favor of Omega Federal Credit Union and against Albert David Wiggins, *aka* A. David Wiggins, and Emily C. Wiggins, in the total sum of \$62,781.01, plus interest in the per diem amount of \$95.37 from January 20, 2018 and thereafter and all other amounts recoverable under Omega's Second Note and Omega's Second Mortgage.
- J. A deficiency judgment shall be entered in favor of Patch of Land Lending, LLC, a Delaware limited liability company, and against Mayfair Real Estate, LLC, an Ohio limited liability company, and Albert David Wiggins, *aka* A. David Wiggins, jointly and severally, in the amount of \$1,179,993.33, plus interest in the per diem amount of \$666.67 from November 17, 2017 and thereafter and all other amounts recoverable under the Note, the Guaranty, and the Mortgage (as those terms are defined under ECF Doc. 68).
- K. The following lien(s) recorded against the Property shall be released:
 1. that certain mortgage in the original principal amount of \$235,000.00 dated April 25, 2016, executed by A. David Wiggins and Emily C. Wiggins, delivered to Omega Federal Credit Union, and recorded on May 5, 2016 in the Office of the Recorder, Delaware County, Ohio as Instrument #2016-00012005 (Official Records Book 1419 at Pages 568-573); and
 2. that certain mortgage in the original principal amount of \$800,000.00 dated June 24, 2016, executed by A. David Wiggins and Emily C. Wiggins, delivered to Omega Federal Credit Union, and recorded on June 30, 2016 in the Office of the Recorder, Delaware County, Ohio as Instrument #2016-00018589 (Official Records Book 1432 at Pages 1160-1166); and
 3. that certain mortgage and security agreement and fixture financing statement in the original principal amount of \$1,000,000.00 dated March 30, 2016, executed by Mayfair Real Estate, LLC, delivered to Patch of Land Lending, LLC, and recorded on July 14, 2016 in the Office of the Recorder, Delaware County, Ohio as Instrument #2016-00020209 (Official Records Book 1435 at Pages 2150-2202); and
 4. that certain notice of lis pendens filed by Patch of Land Lending,

LLC and recorded on August 8, 2017 in the Office of the Recorder, Delaware County, Ohio as Instrument #2017-00015764 (Official Records Book 1507 at Pages 10-13).

- L. The Plaintiff, Patch of Land Lending, LLC, a Delaware limited liability company, shall serve all named Defendants with a copy of this Order by UPS delivery, United States certified mail, return receipt requested, and/or United States regular mail, postage prepaid.
- M. This Order is certified and entered by the Court, and there is no just reason to delay enforcement of or appeal pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

BY THE COURT:

 1-10-2019

THE HONORABLE EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE